

Edith

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3. DD/OLL		✓
3. Admin Officer		
4. Liaison		
5. Legislation	✓	
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SUSPENSE

20 March
Date

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Remarks:

Jayce 13 March
Name/Date

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U.S. HOUSE OF REPRESENTATIVES

PERMANENT SELECT COMMITTEE
ON INTELLIGENCE

WASHINGTON, D.C. 20515

Record

OLL #
84-1012

March 12, 1984

Mr. Andrew A. Feinstein
Subcommittee on Civil Service
Committee on Post Office and Civil Service
209 Cannon House Office Building
Washington, D. C. 20515

Dear Andy:

Thank you for providing your March 5, 1984 discussion draft of H.R. 4681.


As you know from our previous conversation, I believe that the exemption section is inadequate to cover the intelligence agencies who now use the polygraph and certain other special access programs for which counter-intelligence polygraphs are appropriate. I attach herewith a redraft of the exemption section which covers those agencies and programs.

I believe the redraft is straightforward but any explanation of it ought to note that subsection b(1)(C) is meant to include a new special access program to protect cryptographic communications and technology. Such a program would be limited to those who have frequent and significant access to such communications or technology. Also, I believe that the "appropriate Committees of the Congress" referred to in subsection b(5) should include the Committee on Government Operations, the Committee on Post Office and Civil Service, the Committee on Armed Services, and the Permanent Select Committee on Intelligence of the House.

The Committee has not addressed this issue as yet, but should section 7365 of H.R. 4681 reach the floor in its present form, I would recommend that the Committee offer an amendment such as the attached redraft of that section.

I would be happy to discuss this with you at any time.

Sincerely,


Michael J. O'Neil
Chief Counsel

Enclosure

Amendment

On Page 7 of the March 5, 1984 Discussion Draft, strike Lines 12 through 21 and insert in lieu thereof:

"(a) Sections 7362 and 7363 of this title shall not apply with respect to an individual employed by, detailed or assigned to, or applying for a position with --

"(1) the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, or the Federal Bureau of Investigation; or

"(2) the Department of Defense, the Department of State, or the Federal Emergency Management Agency, if such individual has, or will have, access to particularly sensitive classified information within special access programs created pursuant to section 4.2(a) of Executive Order 12356.

"(b) Subsection (a)(2) of this section shall have effect with respect to the use of polygraph examinations only if the head of the department or agency concerned issues regulations authorizing polygraph examinations, limited to questions designed to ascertain whether the subject of the examination has committed, is committing, or is about to commit espionage against the United States, and if such regulations require:

"(1) that the head of the department or agency concerned certifies that unauthorized disclosure of the information to which the employee, detailee or applicant will have access reasonably could be expected to result directly in the loss of --

"(A) human life;

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"(B) intelligence sources and methods which are vital to the fulfillment of U.S. national security requirements or which provide a unique capability to U.S. intelligence agencies; or

"(C) technologies, plans, and procedures vital to the strategic advantage of the United States;

"(2) that, to the extent feasible, those being considered for employment in or assignment to duties which will require access to information for which a limited polygraph examination is a condition of access shall be advised of such requirement prior to their assignment to, or selection for, such duties;

"(3) that any current employee, detailee, or assignee whose duties require access to information for which a limited polygraph examination is established as a condition of access, who refuses to take such examination, shall be denied access to such information, but shall be retained by the employing component, at the same pay and grade, or if not feasible, at same pay and grade in a position elsewhere in the department or agency;

"(4) that access to classified information shall not be denied solely on the basis of the results of an analysis of polygraph charts, unless personally approved by the head of the department or agency, in specific cases, where the information to be accessed is of such extraordinary sensitivity that access under the circumstances poses an unacceptable risk to the national security; and

"(5) that the head of each department or agency shall make annual reports to the appropriate committees of the Congress providing detailed accounts of how this authority was exercised during the previous year.